

IN THE HIGH COURT OF DELHI

CM(M) No. 483/2003

Smt. Chanchal Bansal Petitioner
! through: Ms. Geeta Dhingra, Advocate

VERSUS

\$ Sh. Himanshu Bansal & Anr. Respondents
^ through: None.

% DATE OF DECISION: 21.11.2007

CORAM:

* **Hon'ble Mr. Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)

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1. Petitioner Chanchal got married to Himanshu son of Satish Kumar on 9.12.1997. During summer vacations in courts during 1998 her father-in-law, Satish Kumar, filed a suit for mandatory and permanent injunction in which he impleaded his son Himanshu and the petitioner as defendants 1 & 2 respectively. He stated in the plaint that his son was married to the petitioner on 9.12.1997 and after marriage his son started demanding a share in the property owned by him. He stated that both i.e. his son and daughter-in-law were threatening to take forcible possession of his business premises. He stated that he

had permitted his son and his daughter-in-law to live in room on the first floor of property No. 2740, Gali Arya Samaj, Bazar Sita Ram, Delhi. A decree for mandatory injunction was prayed for that the defendants should be directed to hand over possession of the said room. A decree for permanent injunction was prayed for to restrain his son and his daughter-in-law from interfering with his business in 4 business premises detailed in prayer clause 'B' of the plaint.

2. Summons were issued in the suit returnable for 15.7.1998. On the very first day on which summons were made returnable an application under Order 23 Rule 3 CPC was filed. The same bore the signatures of the plaintiff, his son and his daughter-in-law i.e. the petitioner. On same very day statements of the plaintiff, his son and the petitioner were recorded in support of the compromise application and the suit was disposed of in terms of the compromise.

3. In the application under Order 23 Rule 3 it was mentioned that the defendants have been provided with separate accommodation at property No. 11082, Gali No. 7, Subhash Park, Shahdara where they have shifted. It was stated in the application that entire istridhan of the petitioner has been received by her. The suit was got disposed of in terms of the compromise.

4. On 3.10.1998 i.e. in less than 3 months the petitioner filed an application praying that a fraud had been played upon her. That she had been coerced into signing the compromise application and making a statement in the court and as recorded on 15.7.1998. To bring home the point she pointed out that she and her husband never shifted to a new residence. She explained the circumstances under which she was made to sign the compromise application. She pointed out that after her father in law and her husband tricked her into the compromise and obtained a decree they went to the house of her parents and created a ruckus. They resorted to violence. A kalandra was registered on 16.7.1998 evidencing the behaviour of her husband and her father-in-law.

5. Vide impugned order dated 28.3.2003 learned Trial Judge has rejected the application holding that the remedy of the petitioner was to file a separate suit. That she could not seek recall of the consent decree.

6. I am afraid, the view taken by the learned Judge is totally contrary to law. It is settled law that a fraud vitiates all judicial proceedings. It is settled law that judicial proceedings are rooted on the solemn affirmation and belief that parties have bona fide litigated at the judicial forum.

7. In fact, the only remedy to lay a challenge to a

compromise decree unlawfully obtained or which is void or voidable is to move an application before the court concerned which had passed the decree as held by the Supreme Court in the decision reported as (1993) 1 SCC 581 Banwari Lal Vs. Chando Devi.

8. Before concluding I may note that after the stated collusive decree was obtained, petitioner was thrown out of the matrimonial house. Her husband and her father-in-law continue to reside in the same house.

9. Prima facie, a fraud has been played upon the young bride.

10. But since the matter has to be decided on merits by the learned Trial Judge I speak no more.

11. Petition stands disposed of quashing the impugned order dated 28.3.2003.

12. The application filed by the petitioner for setting aside of the compromise decree is restored. Parties are directed to appear before the learned Trial Judge on 10.12.2007. Learned Trial Judge would put plaintiff and defendant No. 1 to notice and thereafter decide the application filed by the petitioner for setting aside of the compromise decree in accordance with law.

13. Noting that the stated fraud took place in the year 1998 I direct learned Trial Judge to conduct day to day

proceedings and pronounce decision latest by 31.3.2008.

14. Copy of this order be supplied dasti without payment of any charges to learned counsel for the petitioner.

15. No costs.

November 21, 2007
mm

PRADEEP NANDRAJOG, J.